

ORIGINAL

FILED
DISTRICT COURT OF GUAM

DEC - 1 2005 *af*

MARY L.M. MORAN
CLERK OF COURT

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IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
DAN ZHU,)
)
Defendant.)
_____)

CRIMINAL CASE NO. 05-00048

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B), the United States and the defendant, DAN ZHU, enter into the following plea agreement:

1. The defendant agrees to enter a guilty plea to an Indictment charging her with Alien Smuggling for Commercial Gain in violation of Title 8, United States Code, § 1324(a)(2)(B)(ii).

2(a) The defendant, DAN ZHU, further agrees to fully and truthfully cooperate with Federal law enforcement agents concerning their investigation of alien smuggling and related unlawful activities. Cooperation shall include providing all information known to defendant regarding any criminal activity, including but not limited to the offense(s) to which she is

1 pleading guilty. Cooperation will also include complying with all reasonable instructions from
2 the United States; submitting to interviews by investigators and attorneys at such reasonable
3 times and places to be determined by counsel for the United States; producing to the United
4 States all non-privileged documents (including claimed personal documents) and other materials
5 in the possession, custody or control of defendant requested by attorneys and agents of the United
6 States; and testifying fully and truthfully before any grand juries, hearings, trials or any other
7 proceedings where defendant's testimony is deemed by the United States to be relevant.

8 Defendant understands that such cooperation shall be provided to any state, territorial, local or
9 federal law enforcement agencies designated by counsel for the United States. Further, it is
10 understood and agreed that defendant shall not directly, indirectly, or intentionally disclose
11 anything defendant knows or had done concerning the United States' investigation to anyone
12 other than defendant's attorney. Defendant agrees to take no steps directly or indirectly to warn
13 any subject of this investigation that defendant, a subject or anyone else is being investigated.
14

15 2(b) The United States will make this cooperation known to the Court prior to the
16 defendant's sentencing. The defendant further understands that she remains liable and subject to
17 prosecution for any criminal schemes of which she does not fully advise the United States, or for
18 any material omissions in this regard.

19 2(c) This agreement is not contingent in any way upon the outcome of any investigation,
20 proceeding or subsequent trial. Thus, none of the rights and obligations described above are in
21 any way dependent upon a grand jury returning an indictment, a jury's verdict at any trial, or the
22 success of any prosecution.

23 2(d) Except as otherwise herein provided, and in particular as provided in Paragraph 9,
24 the United States agrees not to prosecute defendant for any other non-violent offenses which
25 were committed in the District of Guam or the Northern Mariana Islands (CNMI) which
26 defendant reveals to Federal authorities during her cooperation with the United States. This
27 agreement is limited to crimes committed by defendant in the districts of Guam or the CNMI.
28

1
2 3. The defendant, DAN ZHU, understands that the maximum sentence for Alien
3 Smuggling for Commercial Gain a term of ten (10) years imprisonment, with a mandatory
4 minimum term of three (3) years incarceration, a \$250,000 fine, and a \$100 special assessment
5 fee, which must be paid at the time of sentencing. Any sentence imposed may include a term of
6 supervised release of not more than three (3) years in addition to such terms of imprisonment.
7 Defendant understands that if she violates a condition of supervised release at any time prior to
8 the expiration of such term, the court may revoke the term of supervised release and sentence her
9 up to an additional two (2) years of incarceration pursuant to 18 U.S.C. § 3583(e)(3).

10 (b) If defendant cooperates as set forth in Paragraph 2, the government will recommend
11 that defendant receive the statutory minimum term of incarceration.

12 (c) If the United States believes the defendant has provided "substantial assistance" as
13 defined by Sentencing Guidelines 5K1.1, the United States will request the court to depart below
14 the statutory minimum pursuant to Title 18, United States Code, § 3553(e), and may, as provided
15 by Sentencing Guidelines 5K1.1, request the court to depart below the applicable guidelines
16 range when fixing a sentence for defendant or may, within one year after sentencing herein, move
17 the court to order relief pursuant to Rule 35, Rules of Criminal Procedure to whatever guidelines
18 range or sentence of incarceration the United States in its sole discretion deems appropriate.
19 Defendant acknowledges that the United States has made no promise, implied or otherwise, that
20 defendant will be granted a "departure" for "substantial assistance." Defendant further
21 acknowledges that no promise of any kind has been made that a motion requesting such
22 departure will be made except as otherwise provided herein.

23 The United States agrees to consider the totality of the circumstances, including but not
24 limited to the following factors, in determining whether, in the assessment of the U. S. Attorney,
25 defendant has provided "substantial assistance" which would merit a government request for a
26 downward departure from the mandatory statutory minimum or the applicable Guidelines
27 sentencing range:
28

1 (1) the United States' evaluation of the significance and usefulness of any assis-
2 tance rendered by defendant;

3 (2) the truthfulness, completeness, and reliability of any information or testimony
4 provided by defendant;

5 (3) the nature and extent of defendant's assistance;

6 (4) any injuries suffered or any danger or risk of injury to defendant or her family
7 resulting from any assistance provided by defendant; and

8 (5) the timeliness of any assistance provided by defendant.

9 It is understood that even if a motion for departure is made by the United States, based
10 upon defendant's perceived "substantial assistance," the final decision as to how much, if any,
11 reduction in sentence is warranted because of that assistance, rests solely with the District Court.

12 (d) The government will recommend a fine within the Sentencing Guidelines range. If
13 defendant is financially unable to immediately pay the fine in full, defendant agrees to make a
14 full disclosure of her financial status to the United States Attorney's Office by completing a
15 Financial Disclosure Form (OBD-500) for purpose of fixing a monthly payment schedule.
16 Defendant understands that, by law, interest accrues on any remaining balance of the debt.

17 4. The defendant understands that to establish a violation of Alien Smuggling for
18 Commercial Gain as charged pursuant to 8 U.S.C. § 1324(a)(2)(B)(ii), the government must
19 prove each of the following elements beyond a reasonable doubt:

20 First: the defendant brought or attempted to bring a person who was an
21 alien into the United States;

22 Second: the defendant knew or was in reckless disregard of the fact
23 that the alien had not received prior official authorization to come to,
24 enter or reside in the United States; and

25 Third: that the defendant did this offense for the purpose of commercial
26 advantage or private financial gain.

27 5. The defendant agrees that the Sentencing Guidelines apply to this offense. The
28 defendant also understands that the facts she stipulates to herein will be used, pursuant to 1B1.2,
in calculating the applicable guidelines level. The Government and the defendant stipulate to the
following facts for purposes of the Sentencing Guidelines:

1 (a) The defendant was born in 1963, and is a citizen of the People's Republic of China.

2 (b) If the defendant cooperates with the United States by providing information
3 concerning the unlawful activities of others, the government agrees that any self-incriminating
4 information so provided will not be used against defendant in assessing her punishment, and
5 therefore, pursuant to § 1B1.3 of the Sentencing Guidelines, this information should not be used
6 in determining the applicable guidelines range.
7

8 (c) Defendant agreed with alien smugglers in China to assist Yan QIU, a citizen of China,
9 to illegally enter the United States. Defendant was paid for her services. Defendant met Qiu in
10 Guangzhou and traveled with her to Hong Kong. Defendant gave Qiu a PRC passport in the
11 name Ruo Zhu ZHOU, which she used to enter Hong Kong. Defendant and Qiu traveled to
12 Palau, with Qiu using the passport in the name of Zhou. Qiu resided with the defendant for about
13 a month in Palau. Defendant ~~then~~ ^{had} provided Qiu with Singapore passport # S7719762D in the
14 name Yuk Ching FU. Defendant enlisted the assistance of a Palauan, Steve Salii, who took the
15 Singapore passport to the Continental ticket office in Palau and booked tickets for himself and
16 Qiu, using the name Yuk Ching Fu in the Singapore passport, to travel to Guam. On December
17 5, 2004, defendant drove Qiu to the airport and waited until she had obtained a boarding pass,
18 which was issued in the name Yuk Ching Fu. Qiu boarded the flight to Guam and arrived there
19 later the same day. Defendant knew that Qiu had no authorization to enter the United States.

20 (d) The defendant understands that notwithstanding any agreement of the parties, the
21 United States Probation Office will make an independent application of the Sentencing
22 Guidelines. The defendant acknowledges that should there be discrepancies in the final
23 sentencing guidelines range projected by her counsel or any other person, such discrepancies are
24 not a basis to withdraw her guilty plea.

25 6. The defendant understands that this plea agreement depends on the fullness and
26 truthfulness of her cooperation. Therefore, defendant understands and agrees that if she should
27 fail to fulfill completely each and every one of her obligations under this plea agreement, or make
28 material omissions or intentional misstatements or engage in criminal conduct after the entry of

1 her plea agreement and before sentencing, the government will be free from its obligations under
2 the plea agreement. Thus defendant, in addition to standing guilty of the matters to which she
3 has pled pursuant to this agreement, shall also be fully subject to criminal prosecution for other
4 crimes, and for the counts which were to be dismissed. In any such prosecution, the prosecuting
5 authorities, whether Federal, State, or Local, shall be free to use against her, without limitation,
6 any and all information, in whatever form, that she has provided pursuant to this plea agreement
7 or otherwise; defendant shall not assert any claim under the United States Constitution, any
8 statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of
9 Evidence, or any other provision of law, to attempt to bar such use of the information.
10

11 7. Defendant understands that whether she has completely fulfilled all of the obligations
12 under this agreement shall be determined by the sentencing court in an appropriate proceeding at
13 which any disclosures and documents provided by defendant shall be admissible and at which the
14 United States shall be required to establish any breach by a preponderance of the evidence. In
15 determining whether there has been a breach, the parties agree that any polygraph results and the
16 polygrapher's conclusions and opinions shall be admissible.

17 8. The defendant understands that her sentencing may be continued, at the sole discretion
18 of the United States, until after the indictment and trial of any associates involved. This will also
19 enable the Court to see the full degree of the defendant's cooperation. The defendant therefore
20 waives any right she may have to any speedy sentencing and hereby agrees to any continuance of
21 her sentencing date as it may become necessary.

22 9. In exchange for the government's concessions in this plea agreement, the defendant
23 waives any right to appeal or to collaterally attack this conviction but reserves the right to appeal
24 the sentence imposed in this case. She agrees to waive all constitutional challenges to the
25 validity of the Sentencing Guidelines. The defendant agrees that the government has bargained
26 for a criminal conviction arising from his conduct. If at any time defendant's guilty plea or
27 conviction is rejected, withdrawn, vacated or reversed, for whatever reason, or if any change of
28 law renders the conduct for which she was convicted to be non-criminal, defendant agrees that

1 she will enter a guilty plea to another charge encompassing the same or similar conduct. In such
2 event, defendant waives any objections, motions or defenses based upon the Statute of
3 Limitations, Speedy Trial Act, or constitutional restrictions as to the time of bringing such
4 charges.

5
6 10. The defendant acknowledges that she has been advised of her rights as set forth
7 below prior to entering into this plea agreement. Specifically, defendant has been fully advised
8 of, has had sufficient opportunity to reflect upon, and understands the following:

9 (a) The nature and elements of the charge and the mandatory minimum penalty provided
10 by law, if any, and the maximum possible penalty provided by law;

11 (b) Her right to be represented by an attorney;

12 (c) Her right to plead not guilty and the right to be tried by a jury and at that trial, the
13 right to be represented by counsel, the right to confront and cross-examine witnesses against her,
14 and the right not to be compelled to incriminate herself, that is, the right not to testify;

15 (d) That if she pleads guilty, there will not be a further trial of any kind on the charges to
16 which such plea is entered so that by entering into this plea agreement, she waives, that is, gives
17 up, the right to a trial;

18 (e) Because this plea is entered pursuant to Federal Rule of Criminal Procedure
19 11(c)(1)(B), the defendant understands that she may not withdraw her guilty plea even if the
20 court does not accept the sentencing recommendations of the government or her counsel;

21 (f) That, upon entry of a plea of guilty, or thereafter, the Court may ask her questions
22 about the offenses to which she has pled, under oath, and that if she answers these questions
23 under oath, on the record, her answers may later be used against her in prosecution for perjury or
24 false statement if an answer is untrue;

25 (g) That she agrees that the plea agreement is voluntary and not a result of any force,
26 threats or promises apart from this plea agreement;

27 (h) The defendant is satisfied with the representation of her lawyer and feels that her
28 lawyer has done everything possible for her defense;

1 (i) This plea agreement has been translated into defendant's native language and she fully
2 understands it.
3

4 DATED: _____
5

6 ZHU DAN
7 DAN ZHU
8 Defendant

9 DATED: 11-28-05
10

11 WILLIAM L. GAVRAS
12 Attorney for Defendant

13 LEONARDO M. RAPADAS
14 United States Attorney
15 Districts of Guam and NMI

16 DATED: 11/30/05
17

18 By: Karon V. Johnson
19 KARON V. JOHNSON
20 Assistant U.S. Attorney

21 DATED: 11-30-05
22

23 RUSSELL C. STODDARD
24 First Assistant U.S. Attorney
25
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